IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

WEDNESDAY, THE 30TH MAY 2007 / 9TH JYAISHTA 1929

WP(C).No. 16764 of 2004(U)

AGAINST THE ORDER IN OS 2781 2000 IN
EP.1221/2002 of PRL.MUNSIFF COURT,THRISSUR

.....

PETITIONERS:

---

1. SRI.K.J.JOSE, S/O.JAICOB,
KUTTIKKADAN HOUSE, CHIYYARAM DESAM,
CHIYYARAM VILLAGE, THRISSUR DISTRICT.

2. SRI.M.J.SIJU, S/O.JOSE, MANKUNJI HOUSE,
KURIYACHIRA DESAM, THRISSUR DISTRICT.

BY ADV. SRI.P.G.SURESH

RESPONDENT:

MR.JOHNSON ALAPPATT, MANAGING DIRECTOR,
THE CLASSIC FINANCE AND KURIES (P) LTD.,
THRISSUR-1, THRISSUR DISTRICT.

BY ADV. SRI.V.RAMKUMAR NAMBIAR

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 30/05/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX(WPC 16764/04)

PETITIONERS' EXTS.:

EXT.P1: TRUE COPY OF THE EXECUTION PETITION FILED AS E.P.NO.1221/02 PENDING BEFORE THE MUNSIFF COURT, THRISSUR.

EXT.P2: TRUE COPY OF THE COUNTER FILED BY THE J.D.NO.1 & 2 IN THE E.P.NO.1221/02.

EXT.P3: TRUE COPY OF THE DOCUMENT LIST FILED BY J.D.NO.1 AND 2 IN THE E.P.NO.1221/02.

EXT.P4: TRUE COPY OF THE MEDICAL CERTIFICATE FILED BY THE J.D.NO.1 BEFORE THE MUNSIFF COURT, THRISSUR.

EXT.P5: TRUE COPY OF THE ORDER IN THE EP NO.1221/02 DATED 28.2.2004.

PIUS C. KURIAKOSE,J.

- -

W.P.(C) No.16764 of 2004

- -

Dated: 30th May, 2007

JUDGMENT

Ext.P5 order by which the execution court found that the revision petitioners are neglecting to pay the decree debt in spite of their having sufficient means and ordered arrest on that basis is under challenge in this proceeding under Article 227 initiated by the judgment-debtors. The total E.P. claim as on date, according to the counsel for the respondent, should be above Rs.75,000/-. Going by appendix to Ext.P5 order R.W.1 and R.W.2 were examined on the side of the judgment-debtors. The evidence on the side of the respondent-decree-holder was the oral evidence of P.W.1 litigation clerk. May be there was no effective cross-examination of P.W.1 and the evidence of P.W.1 was convincing to the learned Munsiff. But I find that in Ext.P5 the learned Munsiff has not appreciated the counter evidence which was adduced by R.W.1 and R.W.2. Rather the order proceeds as if no counter evidence at all was adduced by the judgment-debtors. Since there is total lack of appreciation of the oral evidence adduced on behalf of the judgment-debtors and the order itself proceeds as if no counter evidence is adduced by the judgment-debtors, Ext.P5 has to be set aside. But I notice that this court

became inclined to admit this Writ Petition and grant stay only on condition that the petitioners remit a sum of Rs.3000/- within six weeks. I am of the view that such a condition will be perfectly justified even for directing the remand as indicated above. The Writ Petition accordingly will stand disposed of issuing the following directions:

Ext.P5 order is set aside and the learned Munsiff is directed to pass fresh orders referring to the counter evidence which has been adduced by the petitioners also within three months of receiving copy of this judgment subject to the condition that the petitioners shall pay Rs.3000/- to the respondent every month commencing from 15.6.2007 till such time as fresh orders are passed by the learned Munsiff. In the event of any default by the petitioners, they will forfeit the benefit of this order of remand and the impugned order will revive.

srd **PIUS C.KURIAKOSE, JUDGE**